

June 15, 2007

Consumer Sales, Leases and Loans

**2007 Legislative Amendments to the Indiana Uniform Consumer Credit Code
Effective July 1, 2007**

Questions, Answers, and Administrative Interpretations

1. Do the provisions of the Indiana Uniform Consumer Credit Code (IUCCC) apply to out-of-state or Internet consumer credit sellers, lessors and lenders who solicit consumer loans, leases or loans with Indiana residents?

Answer – Yes, the territorial application section of the IUCCC has been amended to require consumer credit sellers, lessors and lenders who are regularly engaged in the extension of consumer credit to comply with the IUCCC if they solicit consumer sales, leases or loans with Indiana residents. A solicitation to an Indiana resident can occur by any means including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means. In the case of out-of-state or Internet consumer lenders, a license to make consumer loans in Indiana must be obtained. [IC 24-4.5-1-201]

2. What remedy may be imposed if an out-of-state or Internet lender (with no Indiana office) violates the IUCCC by failing to obtain a license to make consumer loans in Indiana?

Answer – In addition to other remedies provided in the IUCCC, if an out-of-state or Internet lender (with no office located in Indiana) fails to obtain a license to make consumer loans, the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. [IC 24-4.5-1-201(8)] This provision is consistent with the expansion of the territorial application to require licenses for out-of-state and Internet lenders who are regularly engaged in soliciting loans from Indiana residents. Under prior law applicable to out-of-state lenders, loans were void only if the out-of-state lenders had offices or agents in Indiana. [IC 24-4.5-5-202(2)]

3. When are annual renewals for consumer loan licenses due?

Answer – Consumer loan licenses must be renewed by December 31 of each year beginning in 2007 [IC 24-4.5-6-202(2)].

4. Has the date for the annual notification for credit sellers and lessees also changed?

Answer – No, consumer credit sellers and lessors must still file their annual notification as of January 31. [IC 24-4.5-6-202(2)]

5. Have the additional charges permissible for consumer credit sales, leases or loans changed?

Answer – Yes, the maximum amount of the NSF charge has been increased from \$20 to \$25. With respect to revolving charge accounts, annual (but not periodic) participation fees may be charged if they are reasonable in amount; bear a reasonable relationship to the creditor's costs to maintain and monitor the charge account and are not assessed for the purpose of circumventing the IUCCC as determined by the DFI. Also, a fee not to exceed twenty-five dollars (\$25) may be charged on a revolving loan account in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars (\$100) the maximum credit limit for the account established by the lender.

6. When are creditors required to make refunds for credit insurance and Guaranteed Auto Protection programs and what are the consequences of failing to make refunds on a timely basis?

Answer – If a refund or credit for insurance or other additional charges is required under the IUCCC, it must be paid within sixty (60) days after the date the debt is terminated whether due to prepayment or otherwise. If the refund or credit is not made within the sixty (60) day period, the creditor must pay the debtor for each day after the expiration of the sixty (60) day period an amount equal to the daily interest at the contracted annual percentage rate on the amount of the refund. Also, the director may impose an additional civil penalty of not greater than one thousand dollars (\$1,000) per occurrence if a creditor engages in a pattern or practice of failing to comply with the refund requirements. [IC 24-4.5-4-108(5)]

7. What new requirements have been imposed if a consumer loan secured by a mortgage on real estate is governed by the Alternative Mortgage Transaction Parity Act?

Answer – If a consumer loan secured by a second mortgage which has a balloon payment is made under the authority of the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the applicable federal law. [IC 24-4.5-3-402]

8. What is the Automated Central Licensing System and Repository and will Indiana participate in it?

Answer – It is a nationwide licensing system for the residential mortgage industry being developed by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The licensing system will be a web-based system that will allow lenders and brokers to apply for, amend, update or renew a license using uniform forms from participating state agencies. The system is scheduled to begin operation on January 2, 2008. The Indiana General Assembly authorized the director of DFI to designate such a licensing system for use in Indiana. No final decision has been made as to whether Indiana will participate in this or any other licensing system. [IC 24-4.5-3-503(10) & (11)]

9. What changes have been made to the periodic reporting to the DFI by consumer loan licensees and consumer credit sellers and lessors under the IUCCC?

Answer – The law now provides that every consumer loan licensee or consumer credit seller or lessor must notify the DFI if it or any of its executive officers, key shareholders and other owners, directors or other individuals who exercise supervisory responsibility are under indictment for a felony involving fraud, deceit, or misrepresentation or have been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation not later than thirty (30) days after the date of the event. [IC 24-4.5-3-505(4) and 24-4.5-6-202]

10. What consequences may occur if consumer loan licensees and consumer credit sellers and lessors fail to pay the costs of an investigation and/or examination conducted by the DFI?

Answer – Any costs required to be paid in connection with an investigation or examination must be paid not later than sixty (60) days after the person receives a notice from the DFI of the costs being assessed. The DFI may impose a fee, in an amount fixed by the DFI, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period. Examples of the records which are subject to examination include training, operating, and policy manuals; minutes of management and other meetings and other records that the DFI determines are necessary to perform its investigation or examination. [IC 24-4.5-6-106]

11. What are the civil penalty provisions available to the DFI for violations of IUCCC?

Answer – If the DFI determines, after notice and opportunity for hearing, that a person has violated the IUCCC, the DFI may, in addition to or instead of all other remedies available under the IUCCC, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation. [IC 24-4.5-6-113(3)]